

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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Cleon Clark,

Plaintiff,

-against-

Hutchison, et al.,

Defendants.

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VICTORIA REZNIK, United States Magistrate Judge:

BACKGROUND

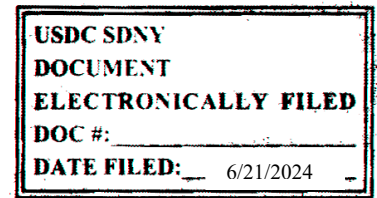
Plaintiff Cleon Clark, pro se and incarcerated,¹ brings this action under 42 U.S.C. § 1983, seeking damages. (*See* ECF No. 1 (Compl.)). He alleges that in May 2022, Mount Vernon police officers used excessive force and falsely arrested him. (*Id.* at 1–5, 12–13).² Plaintiff’s initial Complaint, filed in April 2023, raised claims against: (1) Officer Hutchison; (2) Officer Martinez; and (3) “Mount Vernon Police (All).” (*Id.* at 1–3).

By order dated May 10, 2023, the Court granted Clark’s request to proceed in forma pauperis (IFP), that is, without prepayment of fees.³ (ECF Nos. 2 (Mot.), 5 (Or.)). By order dated May 16, 2023, the Court replaced Defendant “Mount Vernon Police (All)” with the City of Mount Vernon and directed the Clerk of Court to: (1) issue summonses for all Defendants,

¹ When Clark filed his Complaint, he was incarcerated at Westchester County Jail. (*See* ECF No. 1 at 15). But on June 18, 2024, Clark informed the Court that his address changed to Hudson County Correctional Center in Kearny, New Jersey. (*See* ECF No. 36).

² All page numbers to documents filed on ECF refer to pdf pagination.

³ Under 28 U.S.C. § 1915(b)(1), a prisoner is not exempt from paying the full filing fee, even when the prisoner has been granted IFP status. Rather, the Court assesses and collects the filing fee through monthly installments. *See* 28 U.S.C. § 1915(b)(1)–(2).



7:23-CV-3271-NSR-VR

AMENDED
ORDER OF SERVICE

(2) complete the USM-285 forms with the addresses for all Defendants, and (3) deliver all documents necessary to effectuate service on all Defendants to the U.S. Marshals Service. (ECF No. 7 (Or. of Serv.)).

On April 18, 2024, this action was referred to the undersigned for general pretrial supervision. (ECF No. 28 (Or. of Ref.)).

On May 30, 2024, the Court held a telephonic Status Conference, during which Clark requested an extension of time to file an Amended Complaint. (ECF No. 05/30/2024 Minute Entry). On June 18, 2024, Clark filed his Amended Complaint, which adds eleven new defendants: (1) Mount Vernon Police Officer Joseph C. Saetta; (2) Mount Vernon Police Officer Nicholas Kikis; (3) Mount Vernon Police Officer Derek A. Williams; (4) Mount Vernon Police Officer Charles A. Rizzo; (5) Mount Vernon Police Officer David M. Culbert; (6) Mount Vernon Police Officer Stefano R. Silvestri; (7) Sgt. Elio T. Rucci; (8) Michael Timpone; (9) Lytel Martin; (10) Jonathan Gibson-Price; and (11) Gregory Addison. (ECF No. 37 (Am. Compl.) at 1, 3–4).

DISCUSSION

Because Clark has been granted IFP status, he is entitled to rely on the Court and the U.S. Marshals to effect service of process. *Walker v. Schult*, 717 F.3d 119, 123 n.6 (2d Cir. 2013); *see also* 28 U.S.C. § 1915(d) (“The officers of the court shall issue and serve all process . . . in [IFP] cases.”); Fed. R. Civ. P. 4(c)(3) (providing that the Court must order the U.S. Marshals Service to effect service if the plaintiff is authorized to proceed IFP).

To allow Clark to effect service on all the newly-added Defendants through the U.S. Marshals Service, the Clerk of Court is instructed to fill out a U.S. Marshals Service Process Receipt and Return form (USM-285 form) for each of the newly-added Defendants. The Clerk

of Court is further instructed to issue a summons for each of the newly-added Defendants and to deliver to the U.S. Marshals Service all the paperwork necessary for them to effect service upon all the newly-added Defendants.

Rule 4(m) of the Federal Rules of Civil Procedure generally requires service of the summons and complaint to be completed within 90 days of the issuance of the summons. It is Clark's responsibility to request, if necessary, an extension of time for service. *See Meilleur v. Strong*, 682 F.3d 56, 63 (2d Cir. 2012). Clark must also notify the Court in writing if his address changes, and the Court may dismiss the action if he fails to do so.

CONCLUSION

The Court directs the Clerk of Court to issue summonses for all newly-added Defendants; complete the USM-285 forms with the addresses for all newly-added Defendants; and deliver documents necessary to effect service on all newly-added Defendants to the U.S. Marshals Service.

The Clerk of Court is directed to mail a copy of this order to Plaintiff.

SO ORDERED.

DATED: White Plains, New York
June 21, 2024



VICTORIA REZNIK
United States Magistrate Judge

DEFENDANT AND SERVICE ADDRESS

1. Police Officer Joseph C. Saetta
Mount Vernon Police Department
2 Roosevelt Square
Mount Vernon, New York 10550
2. Police Officer Nicholas Kikis
Mount Vernon Police Department
2 Roosevelt Square
Mount Vernon, New York 10550
3. Police Officer Derek A. Williams
Mount Vernon Police Department
2 Roosevelt Square
Mount Vernon, New York 10550
4. Police Officer Charles A. Rizzo
Mount Vernon Police Department
2 Roosevelt Square
Mount Vernon, New York 10550
5. Police Officer David M. Culbert
Mount Vernon Police Department
2 Roosevelt Square
Mount Vernon, New York 10550
6. Police Officer Stefano R. Silvestri
Mount Vernon Police Department
2 Roosevelt Square
Mount Vernon, New York 10550
7. Sergeant. Elio T. Rucci
Mount Vernon Police Department
2 Roosevelt Square
Mount Vernon, New York 10550
8. Michael Timpone
Mount Vernon Police Department
2 Roosevelt Square
Mount Vernon, New York 10550
9. Lytel Martin
Mount Vernon Police Department
2 Roosevelt Square

Mount Vernon, New York 10550

10. Jonathan Gibson-Price
Mount Vernon Police Department
2 Roosevelt Square
Mount Vernon, New York 10550
11. Gregory Addison
Mount Vernon Police Department
2 Roosevelt Square
Mount Vernon, New York 10550